No. 72-851

IN THE

Supreme Court of the United States

October Term, 1973.

THE ONEIDA INDIAN NATION OF NEW YORK STATE, also known as THE ONEIDA NATION OF NEW YORK, also known as THE ONEIDA INDIANS OF NEW YORK, and THE ONEIDA INDIAN NATION OF WISCONSIN, also known as THE ONEIDA TRIBE OF INDIANS OF WISCONSIN, Inc.,

Petitioners,

vs.

THE COUNTY OF ONEIDA, NEW YORK, and THE COUNTY OF MADISON, NEW YORK,

Respondents.

BRIEF FOR THE RESPONDENT, THE COUNTY OF ONEIDA, NEW YORK.

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THE ONEIDA INDIAN NATION OF NEW YORK STATE, also known as the Oneida Nation of New York, also known as the Oneida Indians of New York, and THE ONEIDA INDIAN NATION OF WISCONSIN, also known as the Oneida Tribe of Indians of Wisconsin, Inc.,

Petitioners,

v.

THE COUNTY OF ONEIDA, NEW YORK, and THE COUNTY OF MADISON, NEW YORK,

Respondents.

BRIEF FOR THE RESPONDENT, THE COUNTY OF ONEIDA.

Questions Presented.

I. Does the "well-pleaded complaint" rule apply to the "arising under" language of 28 U.S.C. §1362?

II. Does an action which is basically a State action in ejectment present a Federal question albeit plaintiffs' claim of right or title is founded on a Federal statute, patent or treaty?

Argument.

The sole issue before this court is whether the "well-pleaded complaint" rule previously applied to 28 U.S.C. 1331 is also to be applied to 28 U.S.C. 1362.

It is clear that the latter statute was passed in the wake of *Yoder v. Assiniboine and Sioux Tribes of Fort Peck Indian Reservation, Mont.*, 339 F. 2d 360 (9th Cir. 1964), and the specific intent of Congress was to remove the jurisdictional amount contained in 28 U.S.C. 1331.

Federal District Courts have jurisdiction over cases presenting a Federal question and involving an amount for more than $10,000.

The House report No. 2040 in 1966 U. S. Code Cong. & Adm. News at page 3146 sets forth that the "enactment of this bill would merely authorize the additional jurisdiction of the Court over those cases where the tribes are not able to establish that the amount in controversy exceeds that amount."

The court below, in the opinion of Chief Judge Friendly in 464 Fed. 2d 916 at page 920, states that appellants must show right to possession first since their action is one in ejectment. "As to this a long and unbroken line of Supreme Court decisions holds that the complaint in such an action presents no Federal question even when a plaintiff's claim of right of title is founded on a Federal statute, patent or treaty."

Judge Friendly cited *Taylor v. Anderson*, 234 U. S. 74 (1914), as being directly in point. The defendants in that case asserted ownership in themselves under a certain deed that was void under legislation of Congress restrict-

ing alienation of lands alloted to the Choctaw and Chickasaw Indians. 234 U. S. at 74-75. This was held not to state a claim arising under the laws of the United States, since all that needed to be alleged was "that the plaintiffs were owners in fee and entitled to the possession; that the defendants had forcibly taken possession and were wrongfully keeping the plaintiffs out of possession, and that the latter were damaged thereby in the sum named." *Id.* at 74. The court noted that jurisdiction "must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of (*sic*) avoidance of defenses which it is thought the defendant may interpose." *Id.* at 75-76.

CONCLUSION.

The appeal should be dismissed.

Respectfully submitted,

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